IN THE HIGH COURT OF DELHI

CM(M) No.1158/2007

Shri Subhash Chand Aggarwal ..... Petitioner

VERSUS

$ Shri D.C.Anand & Ors. ..... Respondents

CM(M) No.1159/2007

Shri Subhash Chand Aggarwal ..... Petitioner

VERSUS

$ Shri D.C.Anand & Ors. ..... Respondents

! Present : Mr.B.K.Sood, Adv. and
Mr.Yogesh Kumar Bhatt, Adv.
for the petitioner.

Mr.Gaje Singh, Adv. for
respondents No.2 and 3

% DATE OF DECISION: 19.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. I note that respondent No.1 is the learned Additional District Judge whose orders are under challenge.

2. The petitions question the legality of the order dated 16.5.2007. 2 near identically worded agreements to sell are

the subject matter of 2 suits for specific performance and damages. Though not formally clubbed the suits are before the same Presiding Officer. In both the suits issues were framed on 18.1.2006.

3. In one suit the issues framed are as under :-

> "(i) Whether the suit of the plaintiff is not maintainable in terms of agreement to sell/purchase as barred by time?
>
> (ii) Whether the plaintiff failed to pay Rs.5,06,300/- within the stipulated period set out in the agreement to sell and forfeited his rights to get the property transferred in his name, if so its effect?
>
> (iii) Whether the plaintiff was ready to fulfill the requirement of the agreement to sell for transfer of the suit property by registered sale deed?
>
> (iv) Relief."

4. In the other suit issues framed are as under :-

> "(i) Whether there is no proper enforceable agreement between the parties and and as such plaintiff has not locus standi to file the suit?
>
> (ii) Whether the suit of the plaintiff is not maintainable in terms of agreement to sell/purchase as barred by time?
>
> (iii) Whether the plaintiff is not entitled to get transfer all the industrial plot in his name after expiry of the stipulated period of time on payment of balance amount of Rs.5,06,300/-?
>
> (iv) Whether the plaintiff was ready to fulfill the requirement of the agreement to sell for transfer of the suit property by

registered sale deed?

(v) Relief."

5. In suit No.62/2005 where afore-noted 4 issues (refer para 3 above) were framed an application under Order 14 Rule 5 CPC was filed praying that the issues do not bring out the dispute between the parties. It was prayed that the issues be re-casted and additionally settled as under :-

"(i) Whether the Suit of the plaintiff for specific performance is not maintainable because of Clause 6 of the Agreement to Sell? OPD

(ii) Whether the time was the essence of the Contract under the Agreement to Sell. If so, its effect? OPD

(iii) Whether the defendants were required to obtain permission before execution of the Sale Deed? If yes, what is the effect of sale permission having not been obtained within time? ONUS ON THE PARTIES.

(iv) Whether the plaintiff was ready and willing to perform his part of the Contract? OPP

(v) Whether the plaintiff is entitled to a decree for specific performance? OPP

(vi) If the plaintiff is not held to be entitled for decree for specific performance for any reasons, whether the plaintiff is entitled to, in the alternative for the amount of damages claimed in the suit? If so, to what amount the plaintiff is entitled to? OPP

(vii) Whether the plaintiff is entitled to the interest on the amount of damages? If so, at what rate and from what period? OPP

(viii) Relief."

6. In the other suit similar application was filed praying that the issues be re-casted and additionally framed as under :-

"(i) Whether the Suit of the plaintiff for specific for performance is not maintainable because of Clause 6 of the Agreement to Sell? OPD

(ii) Whether the time was the essence of the Contract under the Agreement to Sell. If so, its effect? OPD

(iii) Whether the defendants were required to obtain permission before execution of the Sale Deed? If yes, what is the effect of sale permission having not been obtained within the time? Onus on the Parties.

(iv) Whether the plaintiff was ready and willing to perform his part of the Contract? OPP

(v) Whether the plaintiff is entitled to a decree for specific performance? OPP

(vi) If the plaintiff is not held to be entitled for decree for specific performance for any reasons, whether the plaintiff is entitled to, in the alternative for the amount of damages claimed in the suit? If so, to what amount the plaintiff is entitled to? OPP

(vii) Whether the plaintiff is entitled to the interest on the amount of damages? If so, at what rate and from what period? OPP

(viii) Relief."

7. The applications have been dismissed. Detailed reasons are in the order dated 16.5.2007 dismissing application

which was filed in Suit No.62/2005. In the other suit, by an order of even date it has been recorded that for the reasons contained in the order dated 16.5.2007 in Suit No.62/2005 the application was being dismissed.

8. The requirement of law while framing issues is as per Order 14 Rule 1 CPC. The requirement is that where material proposition of fact or law formed by a party is denied by the other, issues arise.

9. The 2 agreements to sell dated 26.5.2004 and 29.5.2004 pertain to 300 sq. yards of land each comprised in Khasra No.81/154 and 81/155, Village Bakauli. The purchaser is the same but sellers are different. Material terms of the 2 agreements are near identical. They require sellers to obtain the necessary permissions to effect the sale. There is clause in the 2 agreements that in case of default twice the earnest money would be paid by way of damages. Both of them contain clauses that the buyer would be entitled to enforce the contract if there is a dispute. Disputes surfaced. Suits for specific performance were filed. Alternatively, damages were claimed.

10. Defences were taken near identically alleging that the agreements were not enforceable. Defences were taken that the claims were barred by limitation. Defences were taken

that sale permissions were not required. Defences were taken that the plaintiff was not ready and willing to perform his obligations. It was specifically pleaded that time was of the essence of the contract. It was also a defence taken in the written statement that in view of clause-6 of the agreement to sell the suit for specific performance was not maintainable.

11. On the defences taken issue pertaining to the maintainability of the suit relating to clause-6 of the agreements to sell certainly arises for consideration. Further, issue pertaining to whether time was of the essence of the contract also require to be settled for the reason the ordinary presumption in law relating to sale of immovable property is that time is not of the essence of the contract. Further, in the teeth of the language of the agreements to sell namely sale permissions would be obtained by the sellers, since there was a denial in the written statement that any sale permission was required, an issue had to be struck.

12. Further, since law requires a plaintiff to allege and prove that at all material times plaintiff was ready and willing to perform his obligation under the contract an issue to said effect had to be framed.

13. Because alternative prayer for damages was made in the plaint on the ground that since clause relating to specific

performance is discretionary, should the court not exercise the discretion in favour of the plaintiff who may otherwise prove the case, in said eventuality damages should be awarded. Thus, an issue had to be struck on the alternative claim for the reason the defendants denied liability to pay any damages.

14. Needless to state interest payable on the damages, if any, also require to be decided and thus require an appropriate issue to be framed.

15. The issues which were settled in the 2 suits do not bring out the controversy between parties.

16. The learned Trial Judge was thus wholly unjustified in dismissing the 2 applications filed by the plaintiff.

17. Indeed, the issues which were proposed by the plaintiff in both the suits require to be framed and additionally framed as prayed for.

18. I dispose of the 2 petitions directing that in supercession of the issues which were framed in the 2 suits on 18.1.2006 and as noted above, the issues would be framed/re-framed/additionally settled as proposed in the application under Order 14 Rule 5 in each suit.

19. The trial would take place with reference to the re-casted issues as afore-directed to be framed.

20. Petitions stand disposed of.

21. No costs.

22. Copy of this order be supplied dasti to learned counsel for the parties on payment of usual charges.

December 19, 2007 **PRADEEP NANDRAJOG, J.**
vg